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CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSEPHINE MENDOZA,

Plaintiff,

v.

AMERICAN CREDIT COLLECTIONS,
INC. d/b/a ACC, INC., ACC, LLC a/k/a
AMERICAN CREDIT & COLLECTIONS,
LLC and a/k/a AMERICAN CREDIT
COLLECTIONS, LLC, MARK ADAMS, and
JOAN DAVIS,

Defendants.

C07 05526 HRL

COMPLAINT

COMPLAINT

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for damages brought by consumers for Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA") and California's Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 et seq. (hereinafter, "state Act"), which prohibit debt collectors from engaging in abusive,

1 deceptive and unfair practices. Plaintiff alleges that Defendants sent letters that were
2 false, deceptive, and misleading, in violation of the debt collection laws.

3
4 2. According to 15 U.S.C. § 1692:

- 5 (a) There is abundant evidence of the use of abusive, deceptive, and unfair debt
6 collection practices by many debt collectors. Abusive debt collection practices
7 contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs,
8 and to invasions of individual privacy.
- 9 (b) Existing laws and procedures for redressing these injuries are inadequate to protect
10 consumers.
- 11 (c) Means other than misrepresentation or other abusive debt collection practices are available
12 for the effective collection of debts.
- 13 (d) Abusive debt collection practices are carried on to a substantial extent in interstate
14 commerce and through means and instrumentalities of such commerce. Even where
15 abusive debt collection practices are purely intrastate in character, they nevertheless
16 directly affect interstate commerce.
- 17 (e) It is the purpose of this title to eliminate abusive debt collection practices by debt
18 collectors, to insure that those debt collectors who refrain from using abusive debt
19 collection practices are not competitively disadvantaged, and to promote consistent State
20 action to protect consumers against debt collection abuses.

21 **II. JURISDICTION AND VENUE**

- 22 3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and
23 supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1367.
24 Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this
25 District is proper in that Defendants transact business here and the conduct complained of
occurred here.

26 **III. PARTIES**

- 27 4. Plaintiff JOSEPHINE MENDOZA (hereinafter "Ms. Mendoza") is a natural person
28 residing in Santa Clara County, California.

1 5. Ms. Mendoza is a "consumer" as defined by 15 U.S.C. § 1692a(3) and under California
2 Civil Code § 1788.2. Ms. Mendoza is a "debtor" as defined by California Civil Code §
3 1788.2.

4 6. Defendant AMERICAN CREDIT COLLECTIONS, INC. d/b/a ACC, INC. (hereinafter
5 "ACC, INC.") is a corporation in the State of Pennsylvania and regularly engages in the
6 collection of debt with a principal place of business of 960 N. Main Ave., Scranton,
7 Pennsylvania, 18508.

8 7. ACC, INC. is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Cal. Civil Code
9 § 1788.2.

10 8. Defendant ACC, LLC a/k/a AMERICAN CREDIT & COLLECTIONS, LLC and a/k/a
11 AMERICAN CREDIT COLLECTIONS, LLC (hereinafter "ACC, LLC") is a limited
12 liability company in the State of Pennsylvania and regularly engages in the collection of
13 debt with a principal place of business of 960 N. Main Ave., Scranton, Pennsylvania,
14 18508.

15 9. ACC, LLC is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Cal. Civil Code §
16 1788.2.

17 10. Defendant MARK ADAMS (hereinafter "Defendant Adams") is an employee of ACC,
18 LLC and is engaged in the business of collecting consumer debts in California for third
19 parties.

20 11. Defendant Adams is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Cal. Civil
21 Code § 1788.2.

22 12. Defendant JOAN DAVIS (hereinafter "Defendant Davis") is an employee of ACC, LLC
23 and is engaged in the business of collecting consumer debts in California for third parties.
24
25

1 13. Defendant Davis is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Cal. Civil
2 Code § 1788.2.

3 14. Plaintiff alleges that at all times herein mentioned, each Defendant was, and is now, the
4 agent, servant, employee and/or other representative of the other Defendants, and in
5 doing the things herein alleged, was acting in the scope, purpose and authority of such
6 agency, service employment, and/or representative capacity with the permission,
7 knowledge, consent and ratification of the other Defendants.

8 15. Any reference hereinafter to "Defendant" or "Defendants", without further qualification
9 is meant by the Plaintiff to refer to each Defendant named above.
10

11 **IV. FACTUAL ALLEGATIONS**

12 16. Plaintiff Josephine Mendoza ("Ms. Mendoza") allegedly incurred a consumer obligation
13 for personal, family or household purposes to Providian. The debt was a result of a
14 consumer credit transaction. The debt is more than four years old and Ms. Mendoza had
15 not made a payment towards the debt in more than four years.

16 17. Ms. Mendoza is informed and believes, and thereon alleges that sometime thereafter on a
17 date unknown to Ms. Mendoza, the debt was sold, assigned, or otherwise transferred to
18 ACC, INC. and ACC, LLC for collection from Ms. Mendoza.

19 18. On or about June 7, 2007, Ms. Mendoza received a collection letter from ACC, LLC. A
20 true and accurate copy of the June 7, 2007 collection letter from ACC, LLC to Ms.
21 Mendoza is attached hereto, marked **Exhibit 1**, and by this reference is incorporated
22 herein.
23

24 19. **Exhibit 1** is ACC, LLC's first written notice addressed to Ms. Mendoza in connection
25 with collecting the debt.

- 1 20. **Exhibit 1** falsely threatened imminent legal action not intended and not taken within the
2 time frame threatened.
- 3 21. **Exhibit 1** threatened to sue on a time barred debt.
- 4 22. **Exhibit 1** made false, deceptive, and misleading statements in an attempt to collect a debt
5 or collect payment on a debt.
- 6 23. **Exhibit 1** created a false sense of urgency.
- 7 24. **Exhibit 1** failed to provide Ms. Mendoza notice of her rights under 15 U.S.C. § 1692g.
- 8 25. **Exhibit 1** failed to provide Ms. Mendoza with her rights under Cal. Civil Code §
9 1812.700.
- 10 26. The signature line of **Exhibit 1** contained no signature but the name "Mark Adams."
11 (Defendant Adams herein).
- 12 27. On or about July 23, 2007, Ms. Mendoza received another collection letter from ACC,
13 LLC. A true and accurate copy of the July 23, 2007 collection letter from ACC, LLC to
14 Ms. Mendoza is attached hereto, marked **Exhibit 2**, and by this reference is incorporated
15 herein.
- 16 28. **Exhibit 2** falsely threatened immediate legal action not intended and not taken within the
17 time frame threatened.
- 18 29. **Exhibit 2** threatened to sue on a time barred debt.
- 19 30. **Exhibit 2** made false, deceptive, and misleading statements in an attempt to collect a debt
20 or collect payment on a debt.
- 21 31. **Exhibit 2** created a false sense of urgency.
- 22 32. The signature line of **Exhibit 2** contained no signature but the name "Joan Davis."
23 (Defendant Davis herein).
- 24
25

1 33. Defendants did not intend to file a lawsuit against Ms. Mendoza as threatened nor did
2 they within the time frame threatened.

3 34. A review of public records reveals that Defendants do not typically sue in Santa Clara
4 County.

5 35. Defendants sent **Exhibits 1 and 2** to 40 or more persons in California in the one-year
6 preceding the filing of this complaint. Ms. Mendoza may seek to amend to add class
7 allegations at a later time.
8

9 **V. FIRST CAUSE OF ACTION**
(Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*)

10 36. Plaintiff incorporates by reference each and every paragraph alleged above.

11 37. Defendant violated 15 U.S.C. § 1692 *et seq.*, including but not limited to, 15 U.S.C. §
12 1692e, 1692e(5), 1692e(10), and 1692g by attempting to collect a debt through unfair and
13 deceptive means.

14 38. Defendants violated 15 U.S.C. §§ 1692e and 1692e(5) by falsely threatening immediate
15 legal action not intended and not taken within the time frame threatened.
16

17 39. Defendants violated 15 U.S.C. §§ 1692e(5) and 1692e(10) by threatening to sue on a time
18 barred debt.

19 40. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) by using false, deceptive, and
20 misleading statements in an attempt to collect a debt or collect payment on a debt.

21 41. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) creating a false sense of urgency.

22 42. Defendants violated 15 U.S.C. §§ 1692g by failing to provide Ms. Mendoza notice of her
23 rights.

24 43. As a result of the above violations of the FDCPA, Defendants are liable to Ms. Mendoza
25 for statutory damages, costs and attorney's fees.

VI. SECOND CAUSE OF ACTION

(California's Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788 *et seq.*)

44. Plaintiff incorporates by reference each paragraph alleged above.

45. The foregoing acts and omissions constitute unfair or deceptive and/or unconscionable trade practices made unlawful pursuant to the California Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 *et seq.*

46. Defendants violated Civil Code section § 1788.17, which requires "every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j" of Title 15 United States Code (FDCPA).

47. Defendants violated Cal. Civil Code § 1788.13(j) by falsely representing a lawsuit had been or was about to be filed against Ms. Mendoza.

48. Defendants failed to include the notice required by Cal. Civil Code § 1812.700(a) in **Exhibit 1**, in violation of Cal. Civil Code § 1788 *et seq.*

49. Defendants' acts as described above were done willfully and knowingly with the purpose of coercing Ms. Mendoza to pay the alleged debt, within the meaning of Cal. Civil Code § 1812.702.

50. Defendants' acts described above were done willfully and knowingly with the purpose of coercing Ms. Mendoza into repaying the alleged debt within the meaning of Cal. Civil Code § 1788.30(b).

51. Pursuant to Cal. Civil Code § 1788.32, the remedies under Civil Code "are intended to be cumulative and in addition to any other remedies under any other law.

WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

A. Declare the Defendants' conduct violated the FDCPA and the state Act.

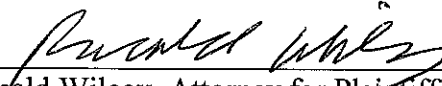
B. Statutory damages pursuant to 15 U.S.C. § 1692k, Civil Code § 1788.17, and Civil Code

1 § 1788.30.

2 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k, Civil Code §
3 1788.17, and Civil Code § 1788.30.

4 D. Grant such other and further relief as it deems just and proper.
5


6 Respectfully submitted,
7

8 
9 Ronald Wilcox, Attorney for Plaintiff

10/27/07
Date

10 **DEMAND FOR JURY TRIAL**

11 Please take notice that Plaintiff demands trial by jury in this action.
12

13 
14 Ronald Wilcox, Attorney for Plaintiff

10/27/07
Date

Exhibit 1

Exhibit 2

**AMERICAN
CREDIT COLLECTIONS, LLC**

American Credit & Collection, LLC
P.O. Box 264
Taylor PA 18517-0264
|||